

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

Christofar Atak,

Case No.:

04-2720

Plaintiff,

**COMPLAINT**

vs.

**JURY TRIAL DEMANDED  
UNDER FRCP 38(b)**

Gregory Siem, in his individual capacity and as an officer of the Rochester Police Department; John Doe and Richard Roe, in their supervisory capacities as ranking Rochester police officers; and the City of Rochester,

Defendants.

For his Complaint, Plaintiff Christofar Atak, hereby states and alleges as follows:

1. This is a civil rights action for money damages for serious injuries suffered by Plaintiff when he was shot in the back, without legal justification, by Rochester police officer Gregory Siem on the evening of September 2, 2002. Defendant Siem's improper use of deadly force violated the plaintiff's federal civil rights and constitutes federally prohibited behavior on behalf of all defendants, all while they were acting under color of state law.
2. Plaintiff brings this action pursuant to 42 U.S.C. §§1983 and 1988, the Fourth Amendment to the United States Constitution and 28 U.S.C. §§1331 and 1343(3). These statutory and constitutional provisions confer this Court with original jurisdiction.
3. The amount of controversy exceeds \$74,000.00, excluding interest and costs.
4. Plaintiff was at all times material herein a citizen of the United States and a resident of the State of Minnesota.

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U.S. DISTRICT COURT MPLS

5. Defendant Siem was at all times material herein a duly appointed and acting officer of the Rochester Police Department and a resident of the State of Minnesota.

6. Defendants John Doe and Richard Roe ("Doe and Roe") were at all times material herein ranking officers with the Rochester Police Department with supervisory responsibilities over Defendant Siem and/or other officers authorized to carry and use hand guns and/or stun guns and residents of the State of Minnesota.

7. Defendant City of Rochester ("Rochester") is a municipality duly incorporated under the laws of the State of Minnesota.

8. On September 2, 2002, Defendant Siem improperly used unreasonable deadly force in shooting an unarmed Plaintiff in the back while allegedly attempting to subdue Plaintiff, causing Plaintiff serious injuries, without sufficient legal justification required by law. Defendant Siem has since stated he thought he was using his stun gun.

9. Plaintiff suffered multiple and serious physical injuries, which are permanent and continuingly disabling in nature.

10. Plaintiff hereby demands a jury trial as to all issues of act herein.

**COUNT ONE**

**CIVIL RIGHTS VIOLATIONS BY DEFENDANT SIEM**

11. Plaintiff re-alleges the allegations contained in paragraphs 1 through 10 herein against Defendant Siem.

12. By the actions described above, Defendant Siem, under color of state law, violated and deprived Plaintiff of his clearly established and well-settled civil rights to be free from the use of excessive and unreasonable force, the improper and unjustified use of deadly force and illegal search and seizure.

13. Defendant Siem subjected Plaintiff to these deprivations of his rights either maliciously or by acting with a reckless disregard for whether Plaintiff's rights would be violated by his actions.

14. As a direct and proximate result of the acts and omissions of Defendant Siem, Plaintiff was shot and injured as stated above, thereby damaging him in an amount exceeding One Million (\$1,000,000.00) Dollars.

15. Plaintiff is entitled to an award of punitive damages in an amount exceeding One Million (\$1,000,000.00) Dollars.

16. Plaintiff is entitled to recovery of his costs, including reasonable attorney's fees, under 42 U.S.C. § 1988.

## **COUNT TWO**

### **CIVIL RIGHTS VIOLATIONS BY DEFENDANTS DOE AND ROE**

17. Plaintiff re-alleges the allegations contained in paragraphs 1 through 16 herein against Defendants Doe and Roe.

18. Upon information and belief, Defendants Doe and Roe were not present at the scene of the shooting of Plaintiff by Defendant Siem on September 2, 2002, however, by their prior actions and inactions, they are liable for the violation of Atak's rights.

19. Upon information and belief, Defendants Doe and Roe allowed, permitted, authorized and/or ratified the joint issuance of a hand gun and stun gun to Defendant Siem, when said Defendants Doe and Roe knew, or should have known, that Defendant Siem was not properly trained in the proper use of such hand guns and stun guns, and had not been given sufficient protocol for the use of such hand guns and/or stun guns to safely use the same.

20. These actions of Defendants Doe and Roe are among the direct and proximate cause of the violations of Plaintiff's civil rights as discussed above and all damages stemming there from, including compensatory damages in an amount exceeding One Million (\$1,000,000.00) Dollars.

21. Since Defendants Doe and Roe acted with a reckless or callous disregard for the rights and safety of the public and Plaintiff, Plaintiff is entitled to an award of punitive damages in an amount exceeding One Million (\$1,000,000.00) Dollars.

22. Plaintiff is also enclosed to an award of costs, including reasonable attorney's fees, under 42 U.S.C. § 1988.

**COUNT THREE**

**CIVIL RIGHTS VIOLATIONS BY DEFENDANT CITY OF ROCHESTER**

23. Plaintiff re-alleges the allegations contained in paragraphs 1 through 22 herein against Defendant City of Rochester.

24. Upon information and belief, before September 2, 2002, Defendant City of Rochester, with deliberate indifference to the rights of citizens, initiated, tolerated, permitted, failed to correct, promoted, or thereafter ratified a custom, pattern and practice on the part of its policy personnel, including Defendant Siem, of unjustified, unreasonable and illegal use of excessive force, including deadly force, involving the use of hand guns and stun guns.

25. Upon information and belief, before September 2, 2002, Defendant City of Rochester adopted certain customs or policies, including, but not limited to: negligent failure to train officers, including Defendant Siem, in the use of deadly force; provision of inadequate instruction in the proper use of deadly force; failure to adopt and implement appropriate policies and protocol regarding the use of force as they apply to the proper use of hand guns and stun guns.

34. In addition, Defendant City of Rochester is liable to Plaintiff by reason of principles of respondeat superior.

35. As a result of Rochester's negligence, as described above, Plaintiff sustained serious physical injuries, which are permanent and continuingly disabling in nature, has sustained and will continue to sustain medical expenses in the future, and has sustained and will continue to sustain in the future a loss of earnings.

WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

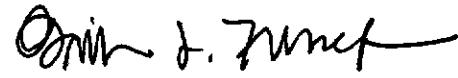
1. As to Count One, a money judgment against Defendant Siem for compensatory and punitive damages in an amount in excess of One Million (\$1,000,000.00) Dollars, together with costs, including reasonable attorney's fees under 42 U.S.C. § 1988 and prejudgment interest;
2. As to Count Two, a money judgment against Defendants Doe and Roe for compensatory and punitive damages in an amount in excess of One Million (\$1,000,000.00) Dollars, together with costs, including reasonable attorney's fees under 42 U.S.C. § 1988 and prejudgment interest;
3. As to Count Three, a money judgment against Defendant City of Rochester for compensatory and punitive damages in an amount in excess of One Million (\$1,000,000.00) Dollars, together with costs, including reasonable attorney's fees under 42 U.S.C. § 1988 and prejudgment interest;
4. As to Count Four, a money judgment against Defendant Siem for compensatory damages in an amount in excess of One Million (\$1,000,000.00) Dollars, together with costs and prejudgment interest;

5. As to Count Five, a money judgment against Defendant City of Rochester for compensatory damages in an amount in excess of One Million (\$1,000,000.00) Dollars, together with costs and prejudgment interest;

6. For such other and further relief as this Court may deem just and equitable.

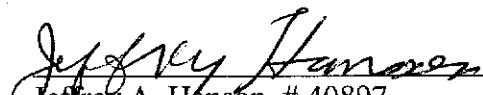
Dated: April 6, 2004.

By:



William F. French, #131945  
Attorney at Law  
627 Woodhaven Court NE  
Rochester, MN 55906  
Telephone: (507) 280-6136

By:



Jeffrey A. Hanson, # 40897  
Hanson Law Firm  
402 S. Mantorville Ave.  
Kasson, MN 55944  
Telephone: (507) 634-3202

*Attorneys for Plaintiff*

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**1. (a) PLAINTIFFS**

Christofar Atak

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** Olmsted  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

William L. French, 627 Woodhaven Ct. NE, Rochester, MN, 55906  
 (507) 280-6136; and, Jeffrey A. Hanson, Hanson Law Firm, 402 S.  
 Mantorville Ave., Kasson, MN, 55944 (507) 634-3202.

**DEFENDANTS**

1. Gregory Siem
2. John Doe
3. Richard Roe
4. City of Rochester

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Olmsted  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question<br>(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
 (For Diversity Cases Only)

- | PTF DEF  | PTF DEF   |
|--|---|
| <input type="checkbox"/> Citizen of This State                   | <input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 Incorporated or Principal Place of Business In This State |
| <input type="checkbox"/> Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State                   |
| <input type="checkbox"/> Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation  |

**IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STAT'DIES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 382 Personal injury - Med. Malpractice <input type="checkbox"/> 385 Personal Injury - Product Liability <input type="checkbox"/> 388 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empi Ret Inc. Security Act	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMC/DIWV(405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Magistrate Judgment

Appeal to District Judge from

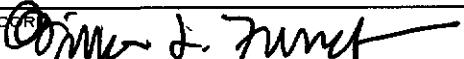
Magistrate Judgment

**VI. CAUSE OF ACTION** (CITE THE U. S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.  
 DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 U.S.C. Sec. 1331 and 1343(3) - deprivation of civil rights by use of excessive police force.

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION  UNDER F.R.C.P 23    **DEMAND \$** \$1,000,000.00    **CHECK YES only if demanded in Complaint**  YES  NO    **JURY DEMAND:**  YES  NO

**VIII. RELATED CASE(S)** (See instructions):  IF ANY    **JUDGE** \_\_\_\_\_ **DOCKET NUMBER** \_\_\_\_\_

DATE May 17, 2004    SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

WILLIAM L. FRENCH  
ATTORNEY AT LAW

P.O. BOX 6323  
627 WOODHAVEN COURT N.E.  
ROCHESTER, MINNESOTA 55903  
e-mail: WLFrench@aol.com  
(507) 280-6136

RECEIVED

May 19 AM 8:56

CLERK U.S. DISTRICT COURT  
MINNEAPOLIS, MN

18 May 2004

US DISTRICT COURT  
202 US COURTHOUSE  
300 S FOURTH ST  
MINNEAPOLIS MN 55415

RE: Atak v. City of Rochester, et al.

Dear Clerk,

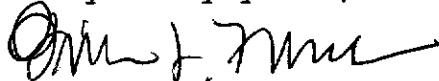
Enclosed are the following:

1. Civil Cover Sheet
2. Summons
3. Complaint
4. Check for \$150

If there is anything else, please advise.

By the way, I think the website is phantastisch--and very helpful, to say the least.

Very truly yours,



William L. French

Encl.

cc: Mr. Christofar Atak  
Mr. Jeffrey A. Hanson